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DEPARTMENT OF STATE

BRIEFING PAPER

(w/ironing)

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CONFIDENTIAL

Transition Papers--HA
PD's and Legislative Provisions
Affecting Activities

The activities of the Bureau of Human Rights and Humanitarian Affairs are significantly affected by Presidential Directive 33 and several legislative provisions relating to bilateral and multilateral economic assistance and to bilateral security assistance. The Bureau's activities with respect to asylum are based on a presidential directive which is incorporated in the Code of Federal Regulations (8 CFR 208).

Begin Confidential

1. Presidential Directive 33: This PD, dated February 17, 1978, states that "It shall be a major objective of U.S. foreign policy to promote the observance of human rights throughout the world." It specifically sets forth that in promoting human rights the U.S. shall use the full range of its diplomatic tools, and that "preferential treatment in political relations and economic benefits" shall be used as inducements and incentives in acknowledging improvements in human rights, "just as countries with a poor or deteriorating record will receive less favorable consideration." End Confidential.

Begin Unclassified

2. Legislation on Economic Assistance and Human Rights

A. Bilateral Economic Assistance

(1) AID - Development Assistance: Section 116 of the Foreign Assistance Act of 1961, as amended.

Under this section, the Bureau is required to concert with AID in giving effect to Congress' prohibition of the provision of development assistance to countries whose governments engage in a consistent pattern of gross violations of internationally recognized human rights, unless the assistance directly benefits the needy. The Bureau carries out the responsibility of the

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Secretary of State for reporting under the Act, especially for the annual reports on human rights conditions in all countries receiving such assistance and countries that are members of the United Nations. It concerts with AID in carrying out the President's responsibility for the use of not less than $1,500,000 in a fiscal year for activities to promote civil and political rights in countries eligible for assistance (the relevant subsection was enacted in 1977 and has been annually renewed).

(2) OPIC - Overseas Private Development Corporation: Section 239(l) of the Foreign Assistance Act (FAA) of 1961, as amended.

Under section 239(l) of the FAA of 1961 as amended, the Bureau consults with OPIC on the effect of its programs on human rights and in particular on compliance with the provision of 239(l) that section 116 of the FAA (see above) applies to OPIC insurance, reinsurance, guaranties and loans, with the possibility of additional exception if national security interest requires it.

It consults with OPIC regarding an annual report to Congress required from OPIC on projects denied on account of human rights violations or provided despite such violations because they directly benefit the needy or are required by the national security interest.

(3) Food for Peace: Section 112 of the Agricultural Trade Development and Assistance Act of 1954, as amended.

Under section 112, the Bureau participates in ensuring that an agreement for sale of agricultural commodities under Title I of the Act is not entered into with a government engaging in a consistent pattern of gross violations of internationally recognized human rights unless it includes a reporting requirement and specifies that, and how, the specific projects or programs using the commodities themselves, or their proceeds, directly benefit the needy people of the country.

(4) Export-Import Bank (EXIM): Section 2(b)(l)(B) of the Export-Import Bank Act of 1945, as amended.

Under section 2(b)(l)(B) the Bureau may be called upon to consider whether the President should determine that the denial by EXIM of an application for credit for non-financial of non-commercial considerations would be "in the national interest where such action would clearly and importantly advance United States policy in such areas as...human rights...".

B. Multilateral Assistance:

(l) Multilateral Development Banks: Sections 701 and 703 of the International Financial Institutions Act of 1977.

Sections 701 and 703 establish goals and standards concerning human rights and basic needs to be pursued and applied through the voice and vote of the United States, as well as by consultation, in the four principal multilateral development institutions in which the United States participates. Among other things they require the United States to advance the cause of human rights, to seek to channel assistance to countries which do not violate human rights, to take account of the adequacy of MIA accounting by Vietnam, Laos and Cambodia in considering assistance for them. It specifically requires that the US representatives at the institutions "oppose" assistance to countries whose governments engage in a consistent pattern of gross violations of internationally recognized human rights or provide refuge to aircraft hijackers, unless the assistance is "directed specifically to programs which serve the basic human needs of the citizens of such country".

The Bureau has a major responsibility for the implementation of the law through the Departments of State and Treasury and consultations in the (Christopher) Interagency Group on Human Rights and Foreign Assistance.

Section 709 of the International Security and Development Cooperation Act of 1980 declares the sense of Congress that the Interagency Group (Christopher) should be established on a "more permanent basis"; that it should also examine security assistance proposals and asks the President to report his recommendations regarding "strengthening" the Group by July 1, 1981.

3. Legislation on Security Assistance, Section 502B, Foreign Assistance Act of 1961, as amended:

Declares that, except under extraordinary circumstances, no security assistance may be provided to a country engaged in a consistent pattern of gross violations of human rights; prescribes standards for the formulation and conduct of security assistance programs, in particular that continuation of security assistance to countries with objectionable human rights practices be justified by extraordinary circumstances and be in the national interest. Grant military training and security assistance for police and civil law enforcement authorities in countries with objectionable human rights records requires a prior "extraordinary circumstances" certification to the Congress. On the basis of Section 502B the Bureau is involved in reviewing security assistance programming, disbursement, and licensing decisions relating to International Military Education and Training grants (IMET), Foreign Military Sales and Credits (FMS), and the commercial sale of Munitions List Items.

4. Specific Country Legislation

In addition to the legislation cited above, there is legislation which prohibits or limits economic and/or military assistance

to specific countries on the basis of human rights considerations. The following specific countries are included under such provisions:

a. Argentina: Sec. 620B of FAA of 1961, as amended.

b. Cambodia: Sec. 602, International Development and Food Assistance Act of 1978; Sec. 610, Foreign Relations Authorization Act, FY 1979.

c. Chile: Sec. 406 of International Security Assistance and Arms Control Act of 1976, as amended. Sec. 35 of Foreign Assistance Act of 1973.

d. Cuba: Sec. 511(b) of Foreign Relations Authorization Act, FY 1978; Sec. 602, International Development and Food Assistance Act of 1978.

e. Laos: Sec. 108, Foreign Assistance and Related Programs Appropriation Act, 1978.

f. South Africa: Sec. 2(b)(8) of Export-Import Bank Act of 19[illegible], as amended.

g. Uganda: Sec. 610 Foreign Relations Authorization Act, FY 1979.

h. Vietnam: Sec. 602, International Development and Food Assistance Act of 1979.

i. Zaire: Conference report on Security Assistance, Act of 1979.

5. Asylum Matters

Following the Kidurka incident, in which a Lithuanian seaman made an unsuccessful attempt to "defect" in November, 1970, the President directed the Department of State to coordinate with appropriate Departments and agencies of the U.S. Government and establish a policy for dealing with asylum requests. On January 4, 1972, a Department Memorandum entitled General Policy for Dealing with Requests for Asylum by Foreign Nationals was published. Since 1972 the Department has continued to be involved in asylum requests and current Asylum Regulations (8 CFR 208) require the Immigration and Naturalization Service to forward all asylum requests to the Department's Bureau of Human Rights and Humanitarian Affairs for review prior to deciding each case. As of December 1, 1980 the Bureau was in the process of reviewing some 7,000 individual asylum cases.

End Unclassified.